IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

MONDAY, THE 1ST OCTOBER 2007 / 9TH ASWINA 1929

WP(C).No. 18158 of 2007(S)

OA.158/2006 of CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH
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PETITIONERS:
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1. **UNION OF INDIA, REPRESENTED BY THE GENERAL MANAGER, SOUTHERN RAILWAY, PARK TOWN POST, CHENNAI- 600 003.**

2. **THE DIVISIONAL RAILWAY MANAGER, SOUTHERN RAILWAY, PALGHAT DIVISION, PALGHAT.**

3. **THE SENIOR DIVISIONAL PERSONNEL OFFICER, SOUTHERN RAILWAY, PALGHAT DIVISION, PALGHAT.**

4. **THE DIVISIONAL SIGNAL & TELECOMMUNICATION ENGINEERING (WORKS), SOUTHERN RAILWAY, PODANUR, COIMBATORE DISTRICT (TAMIL NADU).**

BY ADV. SRI.T.P.M.IBRAHIM KHAN,SR.SC, RAILWAYS,
ADV. SRI. T.C. GOVINDASWAMY.

RESPONDENT:

M.SATHYARTHY PAUL, SON OF SHRI LOTH,
RETIRED ELECTRICAL SIGNAL MAINTAINER,
GRADE-II, SOUTHERN RAILWAY, SHORNUR,
RESIDING AT MELADATH HOUSE, KORAMBAKEL POST,
NIRMALAGIRI (VIA),KOOTHUPARAMBU, CALICUT.

BY ADV. SRI.T.C.GOVINDA SWAMY.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01/10/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.18158/2007:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE ORIGINAL APPLICATION NO. 158/2006 ALONG WITH ITS ANNEXURES FILED BY THE RESPONDENT/APPLICANT BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH.

EXT.P.2: COPY OF THE REPLY STATEMENT FILED BY THE PETITIONERS/RESPONDENT IN ORIGINAL APPLICATION NO. 158/2006 BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH.

EXT.P.3: COPY OF THE ORDER DTD. 15/12/2006 PASSED BY THE LEARNED CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH IN EXHIBIT.P.1. ORIGINAL APPICATION NO. 158/2006.

EXT.P.4: COPY OF THE ORDER DTD. 11/04/2003 PASSED BY THE LEARNED CENTRAL ADMINISTRAIVE TRIBUNAL, MADRAS BENCH IN O.A. NO. 532/2002.

//TRUE COPY//

prv.

K.BALAKRISHNAN NAIR &

T.R.RAMACHANDRAN NAIR, JJ.

W.P.(C) NO. 18158 OF 2007-S

Dated 1st October, 2007.

JUDGMENT

Balakrishnan Nair, J.

The petitioners are the respondents in O.A.No.158/2006 before the Central Administrative Tribunal, Ernakulam Bench. The respondent herein was the applicant. He filed Ext.P1 O.A., claiming that 50% of the casual service rendered by him from 1.1.968 to 17.8.1976 should be reckoned for granting him pensionary benefits. As evident from Annexure-A1 service card produced along with Ext.P1, he has worked at various places from 1.1.68 to 17.8.1976 before his regularisation in the Railways. After absorption, he voluntarily retired from service on 1.7.2000. When he claimed reckoning of his service mentioned above for granting pension, the petitioners herein resisted the same. Therefore, Ext.P1 O.A was filed. Relying on Annexure-A1 produced along with Ext.P1, the applicant submitted that he was all along working under the 4th respondent in the O.A., who is the 4th petitioner herein. Under his direction, he has worked in

various places. Since the office of the 4th petitioner was held to be not a project establishment in several cases by the C.A.T., the applicant claimed the above mentioned benefit. The respondents therein filed Ext.P2 reply statement, resisting the prayers in the O.A. After hearing both sides, the O.A was allowed by the Tribunal, by Ext.P3 order. The Tribunal relied on its own earlier orders in similar matters and also several decisions of this Court, to allow the O.A. The judgments of this Court relied on were in O.P.Nos.16991/1997, 1743 & 24523/1998 and 19763/2000. The Tribunal also relied on its earlier orders in O.A.Nos.849/1990 and 566 & 594/2004 and arrived at a finding that the 4th petitioner's office is not a project establishment and allowed the O.A. The petitioners herein contended that in para 5 of their reply statement they have pointed out that the applicant/respondent was working in several projects in 1975. It is contended that the applicant did not file any rejoinder to that pleading. Therefore, the facts of the present case are different and accordingly the writ petition should be allowed, it is submitted.

2. But, we feel that the details in Annexure-A1 do not support the claim of the petitioners made in para 5 of the reply statement. The details therein would show that the applicant/respondent was being continuously engaged from 1968 to 1976 with short breaks. No material has been

produced by the writ petitioners to disprove the claim of the applicant that he has all along been working under the 4th petitioner. We are of the view that the finding of the Tribunal that the applicant/respondent is liable to be treated as a casual labourer under the 4th petitioner, is a finding of fact. Further, the petitioners have failed to prove that he was working in projects, which are work charged establishments. We also notice the reasoning of the Tribunal in Annexure-A2 judgment that a casual worker in a work charged establishment will not get continuous engagement for about 8 years. The said observation is relevant in the case of the respondent herein also. The respondent also worked as casual labourer for eight years from 1968 to 1976.

3. The learned counsel for the respondent brought to our notice the recent judgment of this Court in W.P.(C) Nos.4658 & 4725/2007, wherein the case of similarly placed workmen under the 4th petitioner was considered. In view of the said judgment and other judgments of this Court mentioned above, we are of the view that the decision of the Tribunal in

Ext.P3 has to be upheld. It is ordered accordingly and the writ petition is dismissed.

K.BALAKRISHNAN NAIR, JUDGE.

T.R.RAMACHANDRAN NAIR, JUDGE.

Nm/